



BILLING CODE: 4410-18

DEPARTMENT OF JUSTICE

Office of the Attorney General

Docket No. OAG 151; AG Order No. 3714-2016

RIN 1121-AA87

Supplemental Guidelines for Juvenile Registration under the Sex Offender Registration and Notification Act

AGENCY: Department of Justice.

ACTION: Final guidelines.

SUMMARY: The Sex Offender Registration and Notification Act (“SORNA”) requires registration of individuals convicted of sex offenses as adults and, in addition, registration of juveniles adjudicated delinquent for certain serious sex offenses. SORNA also provides for a reduction of justice assistance funding to eligible jurisdictions that fail to “substantially implement” SORNA’s requirements, including the juvenile registration requirement, in their sex offender registration programs. These guidelines provide guidance regarding the substantial implementation of the juvenile registration requirement by eligible jurisdictions. The Justice Department’s Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking will examine the following factors when assessing whether a jurisdiction has substantially implemented SORNA’s juvenile registration provisions: policies and practices to prosecute as adults juveniles who commit serious sex offenses; policies and practices to register juveniles adjudicated delinquent for serious sex offenses; and other policies and practices to identify, track, monitor, or manage juveniles adjudicated delinquent for serious sex offenses who are in the community and to ensure that the records of their identities and sex offenses are

available as needed for public safety purposes. By affording jurisdictions greater flexibility in their efforts to substantially implement SORNA's juvenile registration requirement, the guidelines will further SORNA's public safety objectives in relation to serious juvenile sex offenders and facilitate jurisdictions' substantial implementation of all aspects of SORNA. The guidelines concern only substantial implementation of SORNA's juvenile registration requirement and do not affect substantial implementation of SORNA's registration requirements for individuals convicted of sex offenses as adults.

DATES: *Effective Date:* [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

Background

The Sex Offender Registration and Notification Act ("SORNA"), title I of the Adam Walsh Child Protection and Safety Act of 2006, Public Law 109-248, was enacted on July 27, 2006. SORNA (42 U.S.C. 16901 *et seq.*) establishes minimum national standards for sex offender registration and notification in the jurisdictions to which it applies. "Jurisdictions" in the relevant sense are the 50 states, the District of Columbia, the five principal U.S. territories, and federally recognized Indian tribes that satisfy certain criteria. 42 U.S.C. 16911(10).

SORNA provides a financial incentive for eligible jurisdictions to adopt its standards, by requiring a 10 percent reduction of federal justice assistance funding to an eligible jurisdiction if the Attorney General determines that the jurisdiction has failed to "substantially implement"

SORNA. 42 U.S.C. 16925(a). SORNA also directs the Attorney General to issue guidelines and regulations to interpret and implement SORNA. *See id.* 16912(b). To this end, the Attorney General issued the *National Guidelines for Sex Offender Registration and Notification* (“SORNA Guidelines”), 73 FR 38030, on July 2, 2008, and the *Supplemental Guidelines for Sex Offender Registration and Notification* (“Supplemental Guidelines”), 76 FR 1630, on January 11, 2011. The Justice Department’s Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (“SMART Office”) assists all jurisdictions in their SORNA implementation efforts and determines whether they have substantially implemented SORNA’s requirements in their registration and notification programs. *See* 42 U.S.C. 16945; 73 FR at 38044, 38047-48; 76 FR at 1638-39.

In addition to requiring registration based on adult convictions for sex offenses, SORNA includes as covered “sex offender[s]” juveniles at least 14 years old who have been adjudicated delinquent for particularly serious sex offenses. 42 U.S.C. 16911(1), (8); *see id.* 16913 (setting forth registration requirements). In relation to the juvenile registration requirement, as in other contexts, the SMART Office “consider[s] on a case-by-case basis whether jurisdictions’ rules or procedures that do not exactly follow the provisions of SORNA . . . ‘substantially’ implement SORNA, assessing whether the departure from a SORNA requirement will or will not substantially disserve the objectives of the requirement.” 73 FR at 38048.

The SORNA Guidelines explained, in particular, that substantial implementation of SORNA need not include registration of juveniles adjudicated delinquent for certain lesser offenses within the scope of SORNA’s juvenile registration provisions. The Guidelines stated that jurisdictions can achieve substantial implementation if they cover offenses by juveniles at least 14 years old that consist of engaging (or attempting or conspiring to engage) in a sexual act

with another by force or the threat of serious violence or by rendering unconscious or involuntarily drugging the victim. *Id.* at 38050. This interpretation of substantial implementation addressed concerns about the potential registration of juveniles in some circumstances based on consensual sexual activity with other juveniles, which is outside the scope of the coverage required by the Guidelines. *See id.* at 38040-41.

The Supplemental Guidelines included a subsequent change affecting the treatment of all persons required to register on the basis of juvenile delinquency adjudications. SORNA authorizes the Attorney General to create exemptions from SORNA's requirement that information about registered sex offenders be made available to the public through website postings and other means. *See* 42 U.S.C. 16918(c)(4), 16921(b). The Supplemental Guidelines noted that the SORNA Guidelines had endeavored to facilitate jurisdictions' compliance with SORNA's registration requirement for "juveniles at least 14 years old who are adjudicated delinquent for particularly serious sex offenses," but that "resistance by some jurisdictions to public disclosure of information about sex offenders in this class has continued to be one of the largest impediments to SORNA implementation." 76 FR at 1636. The Attorney General accordingly exercised his exemption authority "to allow jurisdictions to exempt from public . . . disclosure information concerning sex offenders required to register on the basis of juvenile delinquency adjudications." *Id.* This exemption did not change the requirement that such juveniles be registered and that information about them be transmitted or made available "to the national (non-public) databases of sex offender information, to law enforcement and supervision agencies, and to registration authorities in other jurisdictions." *Id.* at 1637.

Based on additional experience with SORNA implementation, and further reflection on the practicalities and effects of juvenile registration, the Department of Justice proposed and

solicited public comment on new supplemental guidelines modifying the approach the SMART Office will take in assessing whether a jurisdiction has substantially implemented SORNA's juvenile registration requirement; those proposed supplemental guidelines were published in the Federal Register on April 11, 2016, at 81 FR 21397. The public comment period closed on June 10, 2016. Following consideration of the public comments received, the Department of Justice is now finalizing these supplemental guidelines. For the reasons explained below, the new guidelines will allow consideration of a broader range of measures that may protect the public from serious juvenile sex offenders in determining substantial implementation.

While most states provide for registration of some sex offenders based on juvenile delinquency adjudications, many do not or do so only on a discretionary basis. *See SMART Office, SMART Summary: Prosecution, Transfer, and Registration of Serious Juvenile Sex Offenders 10-11, 24-29 (Mar. 2015) ("SMART Juvenile Summary")*, www.smart.gov/pdfs/smartjuvenilessum.pdf. Too rigid an approach to implementation of the juvenile registration aspect of SORNA, which affects a limited subclass of sex offenders, may conflict at a practical level with the objective of implementing SORNA's more broadly applicable reforms, which affect the whole universe of convicted sex offenders. This occurs when a jurisdiction's unwillingness or inability to implement the juvenile registration requirement discourages or stymies further efforts to implement SORNA generally, because the deficit regarding juvenile registration alone precludes approval of the jurisdiction as having substantially implemented SORNA. Moreover, the juvenile registration requirement is in some respects unique in terms of its scope and rationale and the potential for furthering its objectives by other means.

First, juveniles may be subject to prosecution in either of two distinct justice systems—the juvenile justice system or the adult criminal justice system. The SORNA Guidelines provide that registration jurisdictions may substantially implement SORNA’s juvenile registration requirement by registering persons at least 14 years old at the time of the offense who are adjudicated delinquent for an offense amounting to rape or its equivalent, or an attempt or conspiracy to commit such an offense. *See* 73 FR at 38041, 38050. Practically all states authorize or require adult prosecution for many or all such juveniles. *See* SMART Juvenile Summary 5-9, 16, 19-23. Where juveniles are prosecuted as adults, the resulting convictions are treated as adult convictions under SORNA, and SORNA’s general provisions require the sex offender to register. *See* 73 FR at 38050.

Consequently, a jurisdiction may advance SORNA’s public safety goals in relation to serious juvenile sex offenders not only by prescribing mandatory registration for those offenders adjudicated delinquent, but also by prosecuting such offenders in the adult criminal justice system. Consider a jurisdiction that normally subjects sex offenders in SORNA’s juvenile registration category to adult prosecution and conviction, with resulting registration, but that does not have mandatory registration for the relatively few offenders in this category who are proceeded against in the juvenile justice system. With respect to most sex offenders, the jurisdiction protects the public through registration at least as effectively as a jurisdiction that proceeds against more offenders as juveniles and has mandatory registration based on delinquency adjudications, because all individuals convicted of qualifying sex offenses as adults are required to register. In some respects, a jurisdiction oriented towards adult prosecution of the most serious juvenile sex offenders may more effectively advance SORNA’s public safety objectives, because prosecution as an adult also makes available the more substantial

incarceration and supervision sanctions of the adult criminal justice system. But if mandatory juvenile registration is treated as a *sine qua non* of substantial SORNA implementation, that jurisdiction could not be approved as having substantially implemented SORNA.

A second feature unique to juvenile sex offenders is that SORNA requires registration only for certain juveniles who are adjudicated delinquent for particularly serious sex offenses—that is, sex offenses that are “comparable to or more serious than aggravated sexual abuse” (or attempt or conspiracy to commit such offenses). 42 U.S.C. 16911(8). Jurisdictions that allow for discretionary registration of juveniles adjudicated delinquent for sex offenses may in practice capture many of the juveniles in SORNA’s juvenile registration category—especially those who pose the most danger to others—in their registration schemes. Rather than simply rejecting a jurisdiction’s approach to juvenile registration for having a discretionary aspect, examination of these registration programs as applied would allow the SMART Office to determine whether, when considered as part of a jurisdiction’s overall registration scheme, this variance does or does not substantially disserve SORNA’s purposes.

Considering discretionary juvenile registration might appear to be inconsistent with the response to public comments accompanying the issuance of the SORNA Guidelines, which stated that registration as “a matter of judicial discretion” is insufficient to substantially implement SORNA’s juvenile registration requirement. 73 FR at 38038. However, that response addressed comments urging that discretionary registration should in itself be considered sufficient implementation of SORNA’s requirements, “ignor[ing] what SORNA provides on this issue, and instead do[ing] something different that the commenters believe to be better policy.” *Id.* That is not the approach of these guidelines, which contemplate that the SMART Office will consider the full range of pertinent measures a jurisdiction may adopt, and do not assume that

simply replacing a mandatory registration requirement with a discretionary one achieves in substance what SORNA requires. For example, consider a jurisdiction that (i) largely requires registration by sex offenders in SORNA's juvenile registration class because those offenders are likely to be prosecuted and convicted in the adult criminal justice system, (ii) allows registration on a discretionary basis for sex offenders who remain in the juvenile justice system, and (iii) provides other effective post-release monitoring and identification measures for juvenile sex offenders as discussed below. In assessing whether such a jurisdiction has substantially implemented SORNA's juvenile registration requirement, it is appropriate to take into account the jurisdiction's discretionary registration of adjudicated delinquents along with other factors, and doing so does not conflict with the prior rejection of approaches that "ignore[] what SORNA provides." *Id.*

A third feature specific to the juvenile context is the prevalence of juvenile confidentiality provisions, which can limit the availability of information about the identities, locations, and criminal histories of juvenile sex offenders. Potential consequences of these confidentiality provisions include that (i) law enforcement agencies may lack information about certain sex offenders in their areas that could, if known, assist in solving new sex crimes and apprehending the perpetrators; (ii) sex offenders may be less effectively discouraged from engaging in further criminal conduct, because the authorities do not know their identities, locations, and criminal histories; and (iii) offenders' histories of sexual violence or child molestation, which might disqualify them from positions giving them control over or access to potential victims (such as childcare positions), may not be disclosed through background check systems or affirmative notice to appropriate authorities. These confidentiality provisions accordingly may negatively affect the achievement of SORNA's public safety objectives. *See* 73

FR at 38044-45, 38060-61. Congress's decision to subject certain juvenile sex offenders to SORNA's registration requirements was an effort to overcome risks to the public posed by juvenile confidentiality requirements that Congress considered too broad. *See* H.R. Rep. No. 109-218, pt. 1, at 25 (2005).

A jurisdiction that does not implement juvenile registration in the exact manner specified in SORNA's juvenile registration provisions may nevertheless adopt other measures that address the underlying concerns as part of its substantial implementation of SORNA. For example, a jurisdiction may have means of monitoring or tracking juvenile sex offenders following release, such as extended post-release supervision regimes or address-reporting requirements, that may not incorporate all aspects of SORNA's registration system, but that may nevertheless help law enforcement agencies to identify the sex offenders in their areas and the perpetrators of new sex offenses. Confidentiality requirements for juvenile records may be appropriately defined and limited so as not to conceal risks to potential victims from persons who committed serious sex offenses as juveniles.

In sum, a number of factors are reasonably considered in ascertaining whether a jurisdiction has substantially implemented SORNA's juvenile registration provisions, which have not been articulated or given weight to the same extent under previous guidelines. Accordingly, in these guidelines, the Attorney General expands the matters that the SMART Office will consider in determining substantial implementation of this SORNA requirement. This expansion recognizes that jurisdictions may adopt myriad robust measures to protect the public from serious juvenile sex offenders, and will help to promote and facilitate jurisdictions' substantial implementation of all aspects of SORNA.

Summary of Comments on the Proposed Supplemental Guidelines

Twenty-six comments were received from various agencies, organizations, and individuals. A number of the comments were favorable to the proposed supplemental guidelines' expansion of the matters that the SMART Office will consider in determining whether registration jurisdictions have substantially implemented SORNA's juvenile registration provisions. Some of the comments urged that the guidelines should go further, such as by eliminating all registration of juvenile sex offenders. As discussed below, comments of this nature seek actions that are beyond the legal authority of the Department of Justice. Such comments are not germane to the formulation of these guidelines, which explain how the SMART Office will approach the determination whether registration jurisdictions have substantially implemented the existing juvenile registration requirement under SORNA.

The specific comments, with their identifying designations on www.regulations.gov shown in brackets, are as follows:

#1. This comment [DOJ-OAG-2016-0004-0005], submitted by 15 individuals identified as researchers with expertise on juvenile sexual offending, contains three specific recommendations for revising these guidelines:

(i) The first recommendation is to remove all requirements for registration of youth adjudicated delinquent for sex offenses, based on studies the researchers describe as showing that such registration is ineffective and has adverse consequences. However, the Attorney General has no authority to repeal or amend federal laws by issuing guidelines, or to nullify SORNA's juvenile registration provisions in particular. *See* 73 FR at 38036-38, 38040-41, 38050.

(ii) The second recommendation is to remove all language in these guidelines that could encourage waiver of juveniles to adult criminal court, based on a study the researchers describe as implying that such waiver policies do not improve public safety and are subject to bias.

However, these guidelines do not encourage prosecution of juveniles as adults. Rather, the guidelines (A) recognize that practically all states authorize or require adult prosecution for many or all juveniles in SORNA's juvenile registration category, and (B) provide that policies or practices to prosecute as adults juveniles who commit serious sex offenses are appropriately considered in determining whether a jurisdiction has substantially implemented SORNA's juvenile registration requirement, because adult prosecution may result in registration and the availability of adult criminal sanctions.

(iii) The third recommendation is that language should be included in the guidelines supporting the provision of evidence-based treatment services to youth adjudicated delinquent of sex offenses and their caregivers, based on studies the researchers describe as demonstrating the efficacy of treatment. However, the guidelines as drafted already give weight to policies and practices to identify, track, monitor, or manage juveniles adjudicated delinquent for serious sex offenses—measures that may include treatment.

#2. This comment [DOJ-OAG-2016-0004-0020], from two individuals, refers to and states support for the recommendations appearing in comment #1, discussed above.

#3. This comment [DOJ-OAG-2016-0004-0022], submitted by the National Juvenile Justice Prosecution Center, states that these guidelines are a positive development in balancing public safety with the developmental nature and special needs of juvenile offenders, because they provide a more well-rounded approach to safety and greater flexibility.

#4. This comment [DOJ-OAG-2016-0004-0008], submitted on behalf of 14 organizations and individuals concerned about the inclusion of youth on sex offender registries, includes four specific recommendations and the conclusion that “youth registration should end.” Many of the adverse consequences of juvenile registration asserted by these commenters would

appear to be related to public disclosure of juvenile sex offenders' identities and offenses as opposed to registration per se. The Attorney General has already provided in earlier supplemental guidelines under SORNA that registration jurisdictions need not publicly disclose information about sex offenders required to register on the basis of juvenile delinquency adjudications. *See* 76 FR at 1636-37. The specific recommendations in this comment are as follows:

(i) The first recommendation is to hold a full public hearing on these guidelines before finalizing them. However, a public hearing is not necessary to conclude that the measures identified in these guidelines are appropriately considered in determining whether jurisdictions have substantially implemented SORNA's juvenile registration provisions. The comment does not explain what information relevant to the formulation of these guidelines would be conveyed in a hearing that has not or could not have been provided in the submitted public comments on these guidelines, and does not otherwise provide a persuasive reason to refrain from issuing these guidelines pending a hearing.

(ii) The second recommendation is to convene a task force to study and recommend best practices for youths charged with sexual offenses. However, convening a task force is not necessary to conclude that these guidelines' more flexible approach to determining substantial implementation is warranted. The comment does not explain what information relevant to the formulation of these guidelines would be obtained by a task force that has not or could not have been provided in the submitted public comments, and does not otherwise provide a persuasive reason to refrain from issuing these guidelines pending the creation of a task force and completion of its work.

(iii) The third recommendation is to revise the guidelines to explicitly incentivize evidence-based rather than harmful practices, such as a policy that eschews juvenile registration but “ensures that every young person adjudicated of a sexual offense undergoes a validated evaluation and is placed in risk and needs-based programming.” As noted above, the Attorney General has no authority to nullify SORNA’s juvenile registration requirement, *see* 73 FR at 38036-38, 38040-41, 38050, but in determining whether registration jurisdictions have substantially implemented that requirement, the guidelines as drafted give weight to policies and practices to identify, track, monitor, or manage juveniles adjudicated delinquent for serious sex offenses. These policies and practices may include evaluation and programming measures like those proposed by these commenters. To the extent this recommendation is directed against the guidelines’ reference to adult prosecution of juvenile sex offenders, the response is the same as with comment #1 above. These guidelines do not encourage prosecution of juveniles as adults. Rather, the guidelines recognize the prevalence of policies and practices of adult prosecution of serious juvenile sex offenders, and they treat such policies and practices as relevant factors in determining whether a jurisdiction has substantially implemented SORNA’s juvenile registration requirement.

(iv) The fourth recommendation is to move towards a system that reassures states that they will not lose federal justice assistance funding if they do not register youth and discourages state policies that require youth registration. However, the Attorney General and the SMART Office are charged by law with seeking the substantial implementation of SORNA by registration jurisdictions, including SORNA’s juvenile registration provisions. *See* 42 U.S.C. 16912, 16923-26, 16945. It is not consistent with this responsibility to assure states globally that they will not lose grant funding if they do not implement SORNA’s juvenile registration requirement or to discourage them from implementing that requirement. *See* 73 FR at 38036-38, 38040-41, 38050.

#5. The authors of this comment [DOJ-OAG-2016-0004-0023] identify themselves as the parents of a 16-year-old who is currently incarcerated in a juvenile facility, and who is subject to lifetime inclusion on a sex offender registry, because he had pornographic pictures on his phone. The commenters express concern that this will ruin his life, including preventing him from being in a high school graduation ceremony or attending college. The concerns expressed in the comment relate to actions taken pursuant to state law and do not weigh against issuing guidelines that afford greater flexibility in determining substantial implementation of SORNA's juvenile registration provisions. SORNA itself does not require registration based on juvenile adjudications for pornography offenses like that described in this comment. In terms of offense coverage, it suffices for substantial implementation of SORNA's juvenile registration requirement if jurisdictions require registration of persons at least 14 years old at the time of the offense based on delinquency adjudications for offenses amounting to rape or its equivalent or an attempt or conspiracy to commit such an offense. *See* 73 FR at 38040-41, 38050. SORNA imposes no restrictions on registrants' attending high school or college. The Attorney General has provided in previously issued supplemental guidelines for SORNA implementation that jurisdictions need not publicly disclose information about persons required to register on the basis of juvenile delinquency adjudications. *See* 76 FR at 1636-37.

#6. This comment [DOJ-OAG-2016-0004-0011], submitted on behalf of the Pueblo of Laguna, recommends (i)-(ii) amending state and federal law to ensure that youth sex offenders are placed on registries only after an individualized assessment, with periodic review of youth sex offender registrations, (iii) using youth sex offender registration information solely for law enforcement purposes and not disclosing it publicly, (iv) creating an impartial body to ensure that all registration information is accurate and not misleading and to remove youth offenders

from registries as soon as registration requirements have ended, (v) advising juvenile sexual offense defendants of the consequences of a conviction or adjudication, including registration, community notification, and residency requirements, (vi) taking account of the need to protect the safety of people convicted of sex offenses in deciding the method and scope of community notification, and (vii) providing training on relevant youth issues to officers involved in the investigation of sexual offenses. Regarding (i)-(ii), the Attorney General has no legal authority to amend state or federal laws, and in particular, cannot nullify SORNA's juvenile registration provisions. *See* 73 FR at 38036-38, 38040-41, 38050. However, these guidelines will enable the SMART Office to consider a broader range of measures in determining whether registration jurisdictions have substantially implemented those provisions. Regarding (iii), (v), and (vi), which largely concern community notification, the Attorney General has provided in previous SORNA guidelines that registration jurisdictions need not publicly disclose information about sex offenders required to register on the basis of juvenile delinquency adjudications. *See* 76 FR at 1636-37. Also, regarding (v), SORNA imposes no restrictions on where sex offenders may live ("residency requirements"). Regarding (iv)-(vii) generally, the measures proposed do not conflict with SORNA or these guidelines and registration jurisdictions are free to adopt them.

#7. This comment [DOJ-OAG-2016-0004-0019] states opposition to sex offender registration generally, "for all but high-risk offenders," and in particular states that the commenter is vehemently against registration for persons committing sexual crimes as juveniles. The comment does not weigh against issuance of these guidelines, which explain how the SMART Office will determine whether registration jurisdictions have substantially implemented SORNA's juvenile registration provisions, and allow consideration of an expanded range of measures in that determination.

#8. This comment [DOJ-OAG-2016-0004-0012] proposes eliminating requirements for juvenile registration and supporting well-delivered specialized treatment. However, the Attorney General has no authority to eliminate SORNA's juvenile registration provisions. *See* 73 FR at 38036-38, 38040-41, 38050. These guidelines give weight to policies and practices to identify, track, monitor, or manage juveniles adjudicated delinquent for serious sex offenses, measures that may include treatment.

#9. The authors of this comment [DOJ-OAG-2016-0004-0017] identify themselves as the parents of a 15-year-old boy who is required to register as a sex offender for 10 years, because of a child pornography adjudication based on his sending unsolicited photos of his genitalia to a female classmate. The commenters express concern about adverse effects on their son's life, including limitation of employment opportunities and unsupervised association with a younger brother, and they reproduce and endorse the recommendations set forth in comment #1. Regarding those recommendations, see the discussion of comment #1 above. The comment otherwise relates to actions taken pursuant to state law and does not weigh against issuance of these guidelines, which afford greater flexibility in determining substantial implementation of SORNA's juvenile registration provisions. SORNA does not require registration based on juvenile adjudications for offenses like that described in this comment. In terms of offense coverage, it suffices for substantial implementation of SORNA's juvenile registration requirement if jurisdictions require registration of persons at least 14 years old at the time of the offense based on delinquency adjudications for offenses amounting to rape or its equivalent or an attempt or conspiracy to commit such an offense. *See* 73 FR at 38040-41, 38050. SORNA imposes no restrictions on registrants' qualification for employment or on unsupervised association with younger children. The Attorney General has provided in previously issued

supplemental guidelines for SORNA implementation that jurisdictions need not publicly disclose information about persons required to register on the basis of juvenile delinquency adjudications. *See* 76 FR at 1636-37.

#10. This comment [DOJ-OAG-2016-0004-0004] describes the changes in these guidelines as a step in the right direction, but it characterizes SORNA as “misguided” in relation to juvenile offenders and encourages exploration of other methods of sexual abuse prevention that are less likely to be counterproductive for juvenile offenders and that are focused only on juvenile offenders determined after judicial review to be a risk. However, the Attorney General does not have the authority to override the legislative judgments embodied in SORNA, including SORNA’s juvenile registration provisions. *See* 73 FR at 38036-38, 38040-41, 38050. The comment also states that a number of statements in these guidelines are premised on the assumption that juveniles will sexually reoffend, an assumption that the comment says is not supported by research. However, these guidelines are not premised on an assumption about the extent of re-offense by juvenile sex offenders. Rather, they explain how the SMART Office will determine whether registration jurisdictions have substantially implemented SORNA’s juvenile registration provisions and allow consideration of an expanded range of measures in making that determination. Finally, the comment includes a technical suggestion that a definition of “sexual act” should be included in the background information part of these guidelines, right after the term is used. The preamble cross-references the original SORNA Guidelines, 73 FR at 38050, which provide the relevant definition of “sexual act”. The comment does not provide a reason why the definition of this term should be reproduced in these supplemental guidelines.

#11. This comment [DOJ-OAG-2016-0004-0024], submitted on behalf of Human Rights Watch, recommends deleting two of the three specific factors these guidelines give weight to—

policies and practices to prosecute as adults juveniles who commit serious sex offenses, and policies and practices to register juveniles adjudicated delinquent for serious sex offenses. In support of this recommendation, the comment argues that adult prosecution of juveniles and registration of juveniles have various adverse effects on juveniles. However, the comment provides no persuasive reason why the guidelines should not give weight to these factors. In determining whether registration jurisdictions have substantially implemented SORNA's juvenile registration requirement, policies and practices of adult prosecution of serious juvenile sex offenders may be relevant because they may result in registration and the availability of adult criminal sanctions, and policies and practices of registering juvenile sex offenders may be relevant because, even if discretionary, they may in practice capture many of the juveniles in SORNA's juvenile registration category in the jurisdiction's registration scheme.

#12. This comment [DOJ-OAG-2016-0004-0015], submitted on behalf of the National District Attorneys Association, views the guidelines favorably as providing states with flexibility to comply with SORNA and protect community safety while maintaining the integrity of their juvenile justice systems.

#13. This comment [DOJ-OAG-2016-0004-0026], submitted on behalf of the Lambda Legal Defense and Education Fund, joins in the recommendations of comment #4. The comment particularizes some of the recommendations of comment #4 to reference specifically LGBTQ youth and it asserts that criminal prosecution and punishment and registration for sex offenses operate more harshly against LGBTQ youth. The response to this comment is essentially the same as the response to comment #4.

#14. This comment [DOJ-OAG-2016-0004-0016], submitted on behalf of the Association for the Treatment of Sexual Abusers, generally criticizes juvenile registration and

adult prosecution of juveniles, states support for giving jurisdictions greater discretion whether to register children adjudicated for sexual crimes, thanks the SMART Office for its continued efforts in developing a more responsive and nuanced policy, and provides four specific recommendations:

(i) The first recommendation is to develop appropriate assessments taking account of a youth's clinical, family, and environmental situation to formulate effective, individualized treatment and management plans for youth. However, the guidelines as drafted give weight to policies and practices to identify, track, monitor, or manage juveniles adjudicated delinquent for serious sex offenses, which may include the measures described in this comment.

(ii) The second recommendation is to remove requirements for broad-based youth registration and notification. However, SORNA itself requires registration by certain juveniles adjudicated delinquent for serious sex offenses. The Attorney General has no authority to change what SORNA provides. These guidelines are responsive to the concerns expressed in this comment, within the bounds of the law, in allowing consideration of a broader range of measures in determining whether jurisdictions have substantially implemented SORNA's juvenile registration requirement. The Attorney General has already provided in earlier guidelines under SORNA that registration jurisdictions need not engage in public notification regarding juveniles required to register on the basis of delinquency adjudications. *See* 76 FR at 1636-37.

(iii) The third recommendation is to include language that supports the use of evidence-based treatment and management strategies for youth. However, the guidelines as drafted already give weight to policies and practices to identify, track, monitor, or manage juveniles adjudicated delinquent for serious sex offenses, which may include evidence-based treatment and management strategies.

(iv) The fourth recommendation is to remove language that promotes the waiver of youth to adult courts. The response to comment #1 includes discussion of this issue.

#15. This comment [DOJ-OAG-2016-0004-0021], submitted on behalf of Stop It Now!, supports the recommendations appearing in comment #1. Those recommendations are discussed above in connection with comment #1.

#16. The author of this comment [DOJ-OAG-2016-0004-0010] criticizes the sex offender registration system of his state as adversely impacting juveniles. The comment asks for a direction to the 50 states, the District of Columbia, and the territories to create a process to remove all their registered sex offenders who were convicted when juveniles from every registry by January 2018 and to stop adding new juveniles immediately. The Attorney General has no legal authority to issue such a direction to registration jurisdictions.

#17. This comment [DOJ-OAG-2016-0004-0006], submitted on behalf of the Annie E. Casey Foundation, refers to the letter discussed as comment #1 above, states concerns and recommendations similar to those appearing in that letter, and particularly emphasizes the commenter's concern about prosecution of juveniles as adults. The response to comment #1 discusses these matters.

#18. This comment [DOJ-OAG-2016-0004-0014], submitted by the Attorney General of Alaska, (i) endorses the more flexible approach of these guidelines to determining substantial implementation of SORNA's juvenile registration provisions, (ii) notes that the SMART Office has previously found that Alaska was not compliant with SORNA's juvenile registration requirement, and (iii) provides information about Alaska's system in support of a different conclusion under the new guidelines. Following the issuance of these guidelines, the SMART Office will entertain requests for substantial implementation determinations regarding juvenile

registration in conformity with the new guidelines, including requests from jurisdictions previously subject to negative determinations under the pre-existing substantial implementation standards.

#19. The author of this comment [DOJ-OAG-2016-0004-0018] identifies himself or herself as the parent of a son adjudicated for distributing child pornography, based on sending pictures of himself to a classmate he had a crush on when he was 14. The comment states that the son will have to register as a sex offender for at least 10 years as a result, and that he now cannot attend the high school he attended over the last year or other schools in the area. The comment urges that a child should not be labeled a sex offender for sending a picture of himself to a friend. The response to this comment is essentially the same as the response to comments #5 and #9 above. The concerns expressed in the comment relate to actions taken pursuant to state law and do not weigh against issuing guidelines that afford greater flexibility in determining substantial implementation of SORNA's juvenile registration provisions. SORNA does not require registration based on juvenile adjudications for offenses like that described in the comment, does not restrict where juvenile sex offenders may go to school, and does not require public disclosure of identity or other information for juveniles required to register on the basis of delinquency adjudications.

#20. This comment [DOJ-OAG-2016-0004-0003] recommends that the SMART Office seek a change in the law so that states cannot publicly post information about juvenile registrants on websites unless the registrants are tried and convicted in adult court. The comment is not germane to these guidelines, which are concerned with substantial implementation of the juvenile registration requirement under existing federal law (SORNA). The Attorney General has already provided in earlier guidelines under SORNA that registration jurisdictions need not

publicly post information about persons required to register on the basis of juvenile delinquency adjudications. *See* 76 FR at 1636-37. The comment also suggests that the SMART Office tell states that they will be out of compliance and lose 10% of federal funding if they have restrictions on where registrants can live. The SMART Office has no authority to do so because SORNA contains nothing that either prohibits or requires residency restrictions.

#21. This comment [DOJ-OAG-2016-0004-0007], submitted on behalf of the National Criminal Justice Association, states support for these guidelines. The comment notes that some states have not yet achieved substantial implementation of SORNA because of SORNA's mandatory registration requirements for specific juvenile offenses. The comment states that by allowing the SMART Office to assess juvenile registration in a more holistic manner and to review comprehensively relevant state policies and practices, the guidelines "will go a long way in allowing states . . . to achieve substantial implementation with the requirements of SORNA . . . in a way that protects community safety." Noting that many states have fallen short of compliance in relation to required registration for adjudicated juveniles, the comment describes these guidelines as a welcome clarification about the review the SMART Office will undertake in assessing whether a jurisdiction has substantially implemented SORNA's juvenile registration provisions.

#22. This comment [DOJ-OAG-2016-0004-0025] criticizes sex offender registration for anyone under 20. As explained in the responses to other comments, the Attorney General has no authority to change sex offender registration laws, and in particular, no authority to eliminate SORNA's juvenile registration requirement.

#23. This comment [DOJ-OAG-2016-0004-0002] includes pictures of an apparently injured individual, with text representing that the injuries resulted from an attack occasioned by

his inclusion on a sex offender registry. The comment says that this is what all people labeled as sex offenders can expect from their government. The comment is not germane to these guidelines, which explain how the SMART Office will determine whether registration jurisdictions have substantially implemented SORNA's juvenile registration requirement. If the point of the comment is to assert a risk of violence against sex offenders resulting from public disclosure of their identities, the Attorney General has provided in earlier guidelines that jurisdictions need not make such disclosure for sex offenders required to register on the basis of juvenile delinquency adjudications. *See* 76 FR at 1636-37.

#24. This comment [DOJ-OAG-2016-0004-0013], submitted by the Secretary of Public Safety and Homeland Security of the State of Virginia, states support for these guidelines. The comment recounts that Virginia has been determined to be out of compliance with SORNA because of state statutes that do not automatically require juvenile registration. The comment characterizes as a very welcome development the guidelines' provision for determining substantial implementation with SORNA based on a more comprehensive view of adjudicated juveniles and expresses confidence that the new approach will be beneficial to Virginia in reaching substantial implementation of SORNA. As noted above in the response to a similar comment from the Attorney General of Alaska (#18), the SMART Office will entertain requests for substantial implementation determinations regarding juvenile registration in conformity with the new guidelines, including requests from jurisdictions previously subject to negative determinations under the pre-existing substantial implementation standards.

#25. This comment [DOJ-OAG-2016-0004-0009] is submitted on behalf of "Just Kids," described as a national coalition made up of legal experts, child advocates, juvenile justice policy experts, and victim advocates concerned about including youth on sex offender registries. The

commenters overlap with those submitting comment #4 and the comment is similar in substance to comment #4. The response is essentially the same as that provided above to comment #4.

#26. This comment [DOJ-OAG-2016-0004-0027] states that underage children should not have to suffer lifelong consequences for a mistake and asks for the enactment of a law providing that underage children shown to be productive citizens during their rehabilitation can be blemish-free later in their adult productive life. The Attorney General does not have the authority to enact laws and the comment is not germane to the issuance or formulation of guidelines concerned with the determination whether registration jurisdictions have substantially implemented SORNA's juvenile registration requirement.

In sum, the public comments received did not provide any persuasive reason to change or delay finalization of the proposed guidelines, which are finalized here without change.

Supplemental Guidelines for Juvenile Registration under the Sex Offender Registration and Notification Act

If a jurisdiction does not register juveniles at least 14 years old who are adjudicated delinquent for particularly serious sex offenses in exact conformity with SORNA's provisions—for example, because the jurisdiction uses a discretionary process for determining such registration—the SMART Office will examine the following factors when assessing whether the jurisdiction has nevertheless substantially implemented SORNA's juvenile registration requirements: (i) policies and practices to prosecute as adults juveniles who commit serious sex offenses; (ii) policies and practices to register juveniles adjudicated delinquent for serious sex offenses; and (iii) other policies and practices to identify, track, monitor, or manage juveniles adjudicated delinquent for serious sex offenses who are in the community and to ensure that the records of their identities and sex offenses are available as needed for public safety purposes.

Consistent with the requirements for other aspects of a jurisdiction's program that do not exactly follow SORNA's provisions, a jurisdiction that seeks to rely on these factors in establishing substantial implementation must identify any departure from SORNA's requirements in its submission to the SMART Office and "explain why the departure from the SORNA requirements should not be considered a failure to substantially implement SORNA." 73 FR at 38048. The SMART Office will determine that a jurisdiction relying on these factors has substantially implemented SORNA's juvenile registration requirement only if it concludes that these factors, in conjunction with that jurisdiction's other policies and practices, have resulted or will result in the registration, identification, tracking, monitoring, or management of juveniles who commit serious sex offenses, and in the availability of the identities and sex offenses of such juveniles as needed for public safety purposes, in a manner that does not substantially disserve SORNA's objectives.

Dated: July 26, 2016.

Loretta E. Lynch
Attorney General

[FR Doc. 2016-18106 Filed: 7/29/2016 8:45 am; Publication Date: 8/1/2016]